



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1996

Mr. Carl E. Lewis
County Attorney
Nueces County Courthouse
901 Leopard, Room 206
Corpus Christi, Texas 78401-3680

OR96-0372

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38561.

The Nueces County Sheriff's Department (the "department") received a request for an incident report concerning a public intoxication citation against the requestor. The city contends that this information is excepted from disclosure under section 552.103(a) of the Government Code. You have submitted two exhibits of departmental correspondence for our review. The city asserts that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it received a "notice of claim" letter *and* the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute.

You have submitted to this office for review the attorney's letter (Exhibit C) and notice of claim, which may constitute a claim on behalf of the requestor under the TTCA against the department for alleged conduct resulting in the injury. We understand you to represent to this office that the claim letter is in compliance with the TTCA or the

applicable municipal statute or ordinance.¹ We also have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden for showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We conclude that section 552.103 of the Government Code permits you to withhold the requested information, however, the information generally found on the first page of the offense/incident report, that has been made available to the suspect, must be disclosed. Open Records Decision No. 597 (1991) (exception cannot be invoked to withhold from public disclosure basic information in offense report that has already been made available to defendant in criminal litigation.) Therefore, you may withhold all the requested information, except that generally found on the first page of the offense report. See Open Records Decision No. 597 (1991).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad

Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38561

Enclosures: Open Records Decision No. 638 (1996)
Submitted documents

¹In the future, in order to assert that section 552.103(a) is applicable on the basis of a *notice of claim* letter, you should *affirmatively* represent to this office that the letter complies with the requirements of the TTCA or applicable municipal statute or ordinance.

cc: Mr. Jonathan Anthony Evans
14300 S. Padre Island Drive, Suite No. 231
Corpus Christi, Texas 78418
(w/ enclosure Open Records Decision No. 638 (1996))